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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,286	11/26/2001	Gerald L. Sielagowski	FMCV 0194 PUS	1960

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EXAMINER

HERNANDEZ, OLGA

ART UNIT

PAPER NUMBER

3661

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,286

Applicant(s)

SIELAGOSKI ET AL.

Examiner

Olga Hernandez

Art Unit

3661

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 March 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 3,4 and 6-8 is/are allowed.

6) Claim(s) 1,9,11,12,14,15,17 and 18 is/are rejected.

7) Claim(s) 16 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- 1) Certified copies of the priority documents have been received.
- 2) Certified copies of the priority documents have been received in Application No. _____.
- 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 3/25/02 have been fully considered but they are not persuasive.

Zierolf teaches how to determine the speed of the vehicle; and setting a maximum allowed vehicle deceleration based on vehicle speed (abstract). Saito et al. teaches how to determine the speed of the vehicle; and setting a maximum allowed vehicle deceleration based on vehicle speed (abstract). Regarding that Zierolf measures the wheel speed, it is understood that the wheel speed is the same as the vehicle speed, because the wheel movement is the one that moves the vehicle.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 9 11, 12, 14, 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zierolf, US Patent no. 6,178,370.

As per claims 1, 9, 17 and 18, Zierolf teaches how to determine the speed of the vehicle; and setting a maximum allowed vehicle deceleration based on vehicle speed (abstract). It is inherent that the deceleration is variable. Moreover, it has been held that the recitation that an element is "capable of" perform a function is not a positive limitation but only requires the ability to so

perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 11, 12, 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito et al., US Patent no. 5,835,878.

As per claims 1, 17 and 18, Saito et al. teaches how to determine the speed of the vehicle; and setting a maximum allowed vehicle deceleration based on vehicle speed (abstract). It is inherent that the deceleration is variable. Moreover, it has been held that the recitation that an element is "capable of" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Allowable Subject Matter

Claims 3, 4, 6-8, are allowed.

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

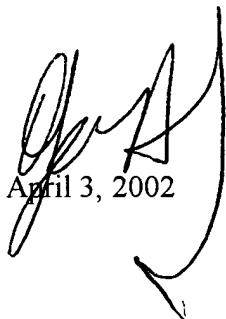
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Hernandez whose telephone number is (703) 305-0918. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A. Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Art Unit: 3661



April 3, 2002

Olga Hernandez
Examiner
Art Unit 3661



WILLIAM A. CUCHLINSKI, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600